

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

850

BRIEF OF APPELLANT AND APPENDIX

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 23,968

JOHN F. GRAHAM,

Appellant,

v.

A.B. MILLER and JOHN BLAZEK,

Appellees.

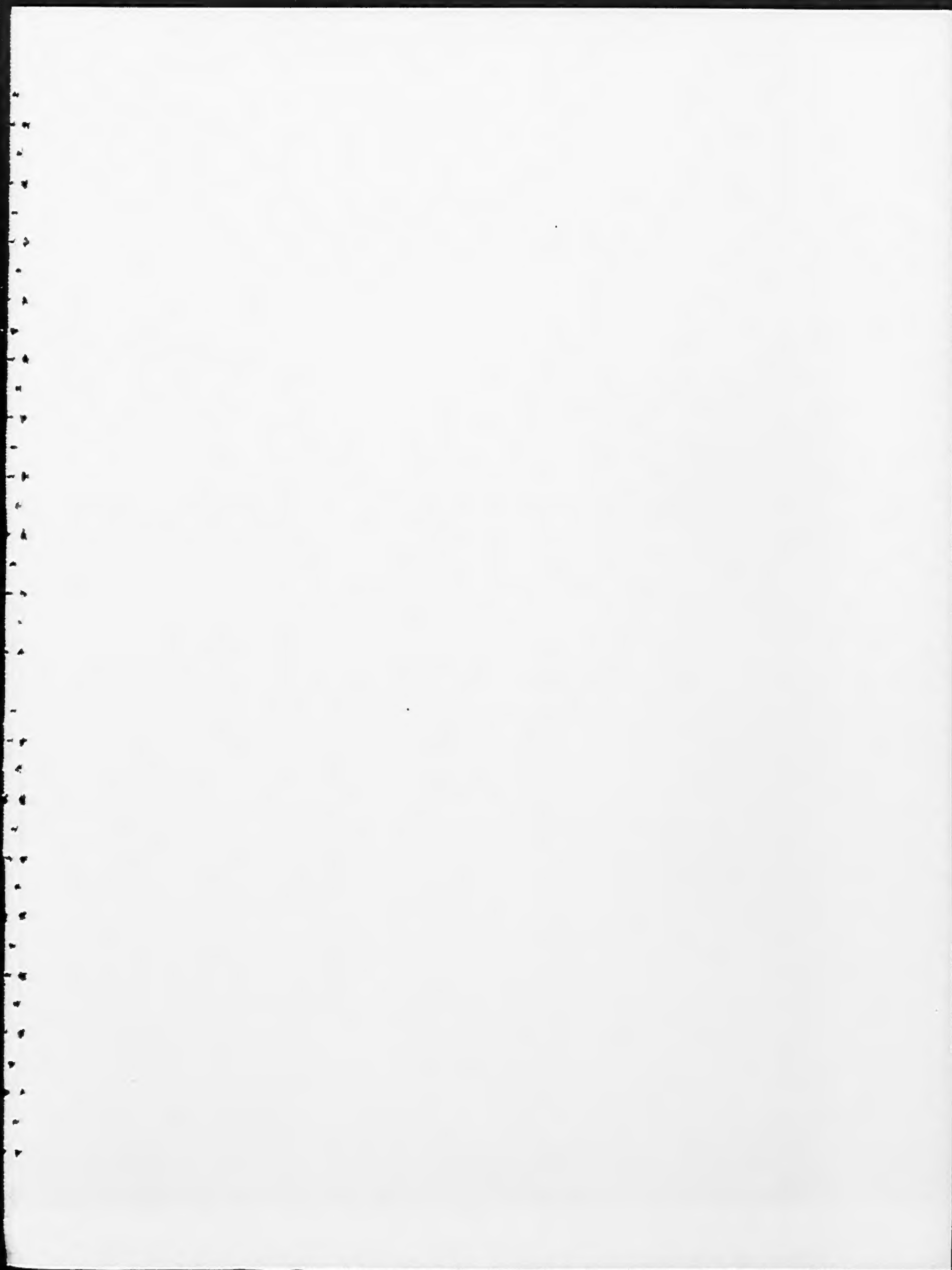
Appeal from Judgment of the United States District Court
for the District of Columbia

United States Court of Appeals
for the District of Columbia Circuit

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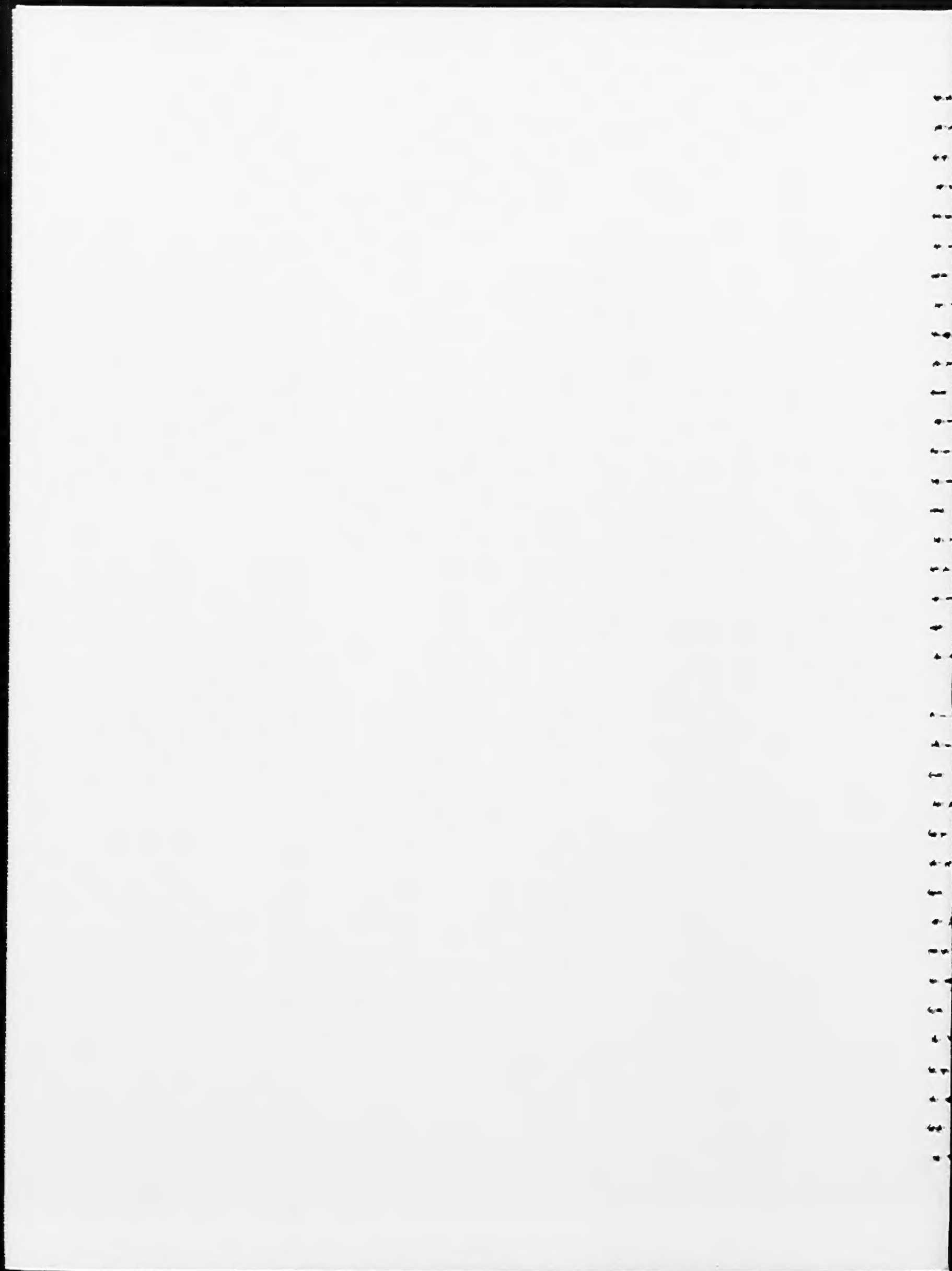
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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 23,968

JOHN F. GRAHAM,

Appellant,

v.

A.B. MILLER and JOHN BLAZEK,

Appellees.

Appeal from the United States District Court
for the District of Columbia

STATEMENT OF THE ISSUE¹

Whether a Special Agent of the Federal Bureau of Investigation who takes a person charged with an offense against the laws of the United States before a municipal, county or State court instead of before a committing magistrate is liable to the person thereby injured.

¹This case has not previously been before this Court.

REFERENCE TO RULINGS

Order granting defendant's Motion for Summary Judgment, and denying plaintiff's Motion for Summary Judgment, September 15, 1969, and Order denying plaintiff's Motion for Relief pursuant to Rule 60(b), December 16, 1969.

STATEMENT OF THE CASE

This case is probably one of the most shameful and sordid episodes in the history of the Federal Bureau of Investigation. The public image of the FBI is that of the efficient, courageous agent defending the moral values upon which this nation was founded and battling (to the death, if need be) the criminal and subversive elements of society. In the appellant's case, however, the appellees, both Special Agents of the FBI, have shown themselves to be intermeddlers in a domestic controversy, allies of a corrupt judiciary, contemptuous of American motherhood, hostile to the sanctity of a Christian family, careless of the constitutional rights of a fellow citizen, and amenable to the concealment of a felony.

The appellant was married to his present wife on July 31, 1946. On January 4, 1947, the appellant adopted his wife's child by a previous marriage with the consent of the child's natural father, the child then being 3½ years old. The terms

of the adoption, filed in the Probate Court for the City and County of Jerome, Idaho, were summarized as follows:

Now, Therefore, It Is Hereby Ordered, Adjudged and Decreed that the said Sheryl Renee Eriksen be, and she is hereby declared, adopted by petitioner, John F. Graham, and it is hereby adjudged that the said petitioner, John F. Graham, shall jointly together with his wife, Madge Little Eriksen Graham, mother of said minor child, have the status of a natural father of said minor, and said minor shall henceforth be treated in all respects as said petitioner's legal child; that Sheryl Renee Eriksen shall be henceforth known as Sheryl Renee Graham, and all other persons shall be henceforth relieved of any parental duty towards, and all responsibility for, said child and have no right or control whatever over her, save and except that of the mother of said minor, Madge Little Eriksen Graham, wife of the petitioner.

Dated this 4th day of January, 1947.

WILLIAM G. COMSTOCK
Probate Judge

The appellant's daughter, the aforesaid Sheryl Renee Graham, continued to live with the appellant and his wife until 1960 when she went to live with her natural father, one H.O. Eriksen, in Barstow, California, However, the said daughter continued to maintain a devoted relationship with her mother, the appellant's wife. In 1962 the said daughter told her mother of her engagement to an 18-year-old boy she had met in Barstow, although she assured her mother she did not plan to get married for another three years. In July, 1963, however, while the appellant was in Europe, the said daughter was married without

the prior knowledge of the appellant or the appellant's wife.

In a newspaper account of the wedding published in the Barstow, California, Desert Dispatch on August 6, 1963, the daughter of the appellant and of appellant's wife was identified as the daughter of Mr. and Mrs. H.O. Eriksen of Barstow. The news article said in part:

Mrs. Eriksen, mother of the bride, wore a turquoise silk sheath dress with a tiered overskirt. Her feathered hat, bag and shoes were done in matching white. Mrs. Hartman, mother of the bridegroom, wore an apricot colored silk organza sheath dress and jacket with a hat matching in color. To complete her ensemble, she wore matching shoes and a bag of white. Both ladies wore a white orchid corsage. Approximately 250 guests attended the rites and wedding reception held for the couple at the church following the ceremonies. The traditional three-tiered wedding cake flanked with white satin bound flowers, adorned the reception table. Serving the cake and punch were Mmes. W.H. Fear of Ventura, Roy Roberts of Indio and Mabel Lynn of San Bernardino, all aunts of the bride.²

During the time the appellant was in Europe the appellant's daughter had refused to visit her mother and by 1965, when the appellant returned from Europe, it was apparent to the appellant that the daughter had been abducted; abduction being the offense of taking away a female from her guardian for the purpose of

²The women referred to as serving cake and punch are relatives of Mrs. H.O. Eriksen, not of her husband. The contempt in which appellees hold motherhood can be estimated by their utter indifference to the feelings of a mother on reading this kind of news article about her daughter's wedding. The appellant's role under such circumstances is circumscribed by Scripture (Gen. 2:24): "A man shall cleave to his wife."

marriage. A felony under common law, abduction was made punishable by imprisonment in 1275, in the third year of the reign of Edward I (3 E. 1. 13):

And the King prohibiteth that none do ravish nor take away by force any maiden within age (neither by her consent, nor without) nor any wife or maiden of full age, nor any other woman against her will; and if any do, at his suit that will sue within forty days, the King will do common right; and if none commence his suit within forty days, the King shall sue; and such as be found culpable, shall have two years imprisonment, and after shall fine at the King's pleasure; and if they have not whereof, they shall be punished by longer imprisonment, according as the trespass requireth.

A statute making it a felony to abet abduction was enacted in 1486 in the third year of the reign of Henry VII (3. H. 7. 2):

[W]hat persons from henceforth that taketh any woman so against her will unlawfully, that is to say, maid, widow, or wife, that such taking, procuring, and abetting to the same, be felony, and such misdoers, takers and procurators to the same, and receitors, knowing the said offence in form aforesaid, be henceforth reputed and judged as principal felony, provided alway that this does not extend to any person taking any woman, only claiming her as his ward or bond-woman.³

A similar statute was enacted in California in 1872 (California Penal Code, Section 265):

Every person who takes any woman unlawfully, against her will, and by force, menace, or duress, compels her

³Under common law in all cases where a woman is taken away, the taking away is presumed to be by force and against her will, since the woman has no power of consent. Records in the San Bernardino (Calif.) County Court House show that the marriage license application signed by the appellant's daughter and the son of the aforementioned Mrs. Hartman was also signed by Mrs. Hartman.

to marry him, or to marry any other person, or to be defiled, is punishable by imprisonment in the State Prison not less than two nor more than fourteen years.

In respect to Section 265 the courts of California have held:

The abduction need not be accompanied with a removal into another county, State or territory; the intent to detain and conceal being the gist of the complaint. People v. Chu Quong, 15 C. 332.

To support an indictment for "taking" it need not be shown that force was used; it is sufficient if improper solicitation or inducements accomplished the purpose. People v. Demousset, 71 C. 611, 12 P. 788.

In the decisions of courts generally the word "abduction" and the words "taking away" are used as the equivalent of each other. Humphrey v. Pope, 122 C. 253, 54 P. 847.

Abduction is the taking away of a wife, child or ward by fraud and persuasion or open violence. Id.

A person may be guilty of taking a woman against her will and by force, menace and duress compelling her to be defiled, even though the actual defilement is accomplished by another. People v. Palacio, 86 C.A. 2d 778, 195 P. 2d 439.

It is well settled (Law of Torts, Prosser, § 103) that a parent legally entitled to the services of a minor child, or actually receiving the services of an adult one, can maintain an action for interference with the parental relationship by abducting or enticing the child away from home; that the action is primarily in the father; that the parent's interests receive the broadest protection in his action for sexual intercourse with his child, which is roughly analogous to the husband's ac-

tion for criminal conversation with his wife, and involves a similar injury to family honor and reputation and to the feelings incident to the relation; the intercourse may be by seduction with the consent of the girl, which will not defeat the parent's action.

Because it appeared that his daughter had been abducted, the appellant, from June to October, 1965, wrote several abusive and defamatory letters to the alleged abductors, the purpose of which letters being to incite the abductors to bring suit for libel in the District of Columbia. Such a suit would have permitted the appellee to counter-sue in this jurisdiction, the appellant having been advised by counsel in the District of Columbia that in all probability an action brought by the appellant in California would be unsuccessful.

The only response the appellant received to the said abusive and defamatory letters was a letter, dated June 28, 1965, which was addressed to the appellant's wife and signed by the aforementioned Mrs. Hartman. Mrs. Hartman's letter stated:

Mr. Grahams letters to our friends and associates have been dismissed with the explanation that, although we have a lovely daughter-in-law, the poor child is burdened with a mentally deficient stepfather who is not responsible for his actions. Considering the nature of the letters, this brief explanation was readily accepted; however, he cannot be allowed to continue with his childish pastime.

Being normal parents, it is incomprehensible to us

that a mother could continue to allow her daughter to be so maligned. In spite of all efforts to the contrary, however, our children have a good marriage with everything in their favor. It is our intention to see that all obstacles are minimized.

Apparently Mr. Graham is an inadequate, impoverished transient without an address of his own. Since he is obviously making use of your address, I am certain this message will reach him.

MRS. E.F. HARTMAN

In response to a direct request by the appellant's wife to the appellant's daughter to visit the appellant's wife in Washington, D.C., the appellant's daughter sent a telegram to the appellant and his wife, dated October 11, 1965, which stated:

WILL NOT RETURN UNDER ANY CIRCUMSTANCES. SUGGEST YOU SEEK PSYCHIATRIC CARE.

SHERYL.⁴

On October 28, 1965, as a result of complaints received from the recipients of the said abusive and defamatory letters, the appellees called on the appellant at his residence and stated that, although the appellant had not violated any law up to that time, a letter threatening injury to a person would be in violation of 18 U.S.C. 876.⁵ The appellant explained to the appellees the pur-

⁴ There is reason to believe that, having betrayed her mother (the appellant's wife), the appellant's daughter first intended to conceal the betrayal by having her mother committed to a mental hospital but was prevented from doing so when the appellant came to his wife's defense.

⁵ 18 U.S.C. 876 - Whoever knowingly so deposits * * * any communication * * * addressed to any other person and containing any threat to kidnap any person or any threat to injure the person of the addressee or of another, shall be fined not more than \$1,000 or imprisoned not more than five years, or both.

pose of the abusive and defamatory letters and the appellees told the appellant they understood the appellant's feelings, stating to the appellant: "We are parents ourselves."⁶

By the time the appellees called on the appellant it had become increasingly apparent that the alleged abductors would not bring suit against the appellant in the District of Columbia. The appellant therefore wrote a letter threatening injury to the person whom the appellant's daughter had married, and, on or about November 10, 1965, mailed a copy of said letter to appellee Blazek. The appellant's purpose was to obtain a criminal trial in the District of Columbia and, by means of such trial, pursuant to the Sixth Amendment's compulsory process for obtaining witnesses clause, to permit the examination under oath of the alleged abductors. (See 23 D.C. Code 803 which provides for the apprehension of material witnesses.) On November 30, 1965, the appellees placed the appellant under arrest at his residence and, ostensibly in accordance with Rule 5(a), Federal Rules of Criminal Procedure, which Rule provides that a Federal prisoner shall be taken before the nearest available commissioner, the appellees took the appellant, evidently by pre-arrangement, be-

⁶It was reported to the appellant that, on receipt of the threatening letter in California, FBI agents were assigned to protect the threatened person. If this report is true, two questions occur to the appellant, to wit: (1) pursuant to what authority are FBI agents hired out as personal bodyguards? and (2) what prompted agents of the FBI to act like hysterical schoolgirls?

fore one Harold H. Greene, a judge of the municipal court (Court of General Sessions) in the District of Columbia.⁷ Apparently acting under orders, the said Judge Greene, in the presence of the appellees, ignored the provisions of Rule 5(b), Federal Rules of Criminal Procedure, and under color of 24 D.C. Code 301(a),

⁷ It is not entirely a coincidence that a week after one Abe Fortas was nominated an Associate Justice of the U.S. Supreme Court in July, 1965, Greene was appointed a judge of the D.C. Court of General Sessions. (Greene became chief judge of the D.C. Court of General Sessions in November, 1966). Three weeks after Greene's appointment the President named David G. Bress, a particular Fortas friend and a founder and former chairman of the Washington Chapter, American Jewish Committee, as U.S. Attorney for the District of Columbia. It is an AJC tenet that 20,000,000 adult Americans are "anti-Semitic," all of whom are mentally ill. Greene is a German-Jewish refugee who came to the United States in 1943.

Since 1801 what is now the D.C. Court of General Sessions has been variously a county and municipal court but never a U.S. court. (2 Stat. 107; 12 Stat. 580; 12 Stat. 764; 31 Stat. 1190; 35 Stat. 623; 56 Stat. 190; 76 Stat. 1171). On February 21, 1871 (16 Stat. 419) Congress created a municipal government known as "The District of Columbia" with the power to sue, be sued, make contracts, have a seal and exercise all other powers of a municipal corporation not inconsistent with the Constitution and the laws of the United States. On June 11, 1878 (20 Stat. 102) Congress enacted provisions that the District of Columbia shall remain and continue a municipal corporation and that the commissioners for the District shall be deemed and taken as officers of such corporation. See Barnes v. District of Columbia, 91 U.S. 540; Metropolitan Railroad Co. v. District of Columbia, 132 U.S. 1; District of Columbia v. Woodbury, 136 U.S. 450; Donovan v. United States, 21 Ct. of Claims 120; Griffith v. Rudolph, et al., 298 Fed. Rep. 672; 18 Op. A.G. 161; 22 Op. A.G. 59; 28 Op. A.G. 438; 29 Op. A.G. 410; 30 Op. A.G. 119, 122. In 22 Op. A.G. at 61 the Attorney General said:

[C]itations and decisions make it very clear that the officers and employees of the District of Columbia are not officers and employees of the General Government of the United States, but of the municipal corporation known as the District of Columbia. * * * They are as distinct from the civil service of the United States as would be the officers of any city government in one of the States of the Union from the civil service of the state itself.

ordered the appellant committed to the D.C. General Hospital for mental observation. At the end of 30 days, also presumably by pre-arrangement, psychiatrists of the D.C. General Hospital found the appellant to be of unsound mind. The appellant was returned to the D.C. Court of General Sessions where, again in the presence of the appellees, the appellant was, pursuant to 24 D.C. Code 301(a), ordered committed to St. Elizabeths Hospital for the Insane. (Imprisoned on November 30, 1965, the appellant was indicted on February 24, 1966, and arraigned on May 23, 1966, at which time he was released on his own recognizance.³

That the appellees were, and presumably are, contemptuous of American motherhood and were, and presumably are, hostile to the sanctity of a Christian family, is demonstrated by the fact that, despite the prima facie evidence of abduction published in the Barstow, California, Desert Dispatch on August 6, 1963, the appellees sought to conceal the abduction by having the appellant declared insane, thereby adding to the agonies of a mother whose heart was already broken by the appropriation of

³It would seem that after having kept the appellant locked up for six months the Government concluded that the appellant had not violated any Federal law after all, for, on October 19, 1966, the Government moved to dismiss the indictment. Enacted to penalize kidnapers, 18 U.S.C. 876 is known as the Federal Extortion Law. Since there was no element of extortion in the appellant's alleged criminal offense and since the appellant's daughter was a hostage of those who were not her legal guardians, it would appear that in the appellees' opinion the Federal Extortion Law applies to those who threaten injury to kidnapers.

her child by another woman. That the appellees were, and presumably are, careless of the constitutional rights of a fellow citizen and were, and presumably are, allied with a corrupt judiciary is demonstrated by the fact that, notwithstanding the speedy trial clause of the Sixth Amendment or the Fifth Amendment's guarantee that no person shall be held to answer for a crime unless on indictment, the appellant was imprisoned without being admitted to bail for three months prior to the time he was indicted on February 24, 1966.⁹ Were justice in the District of Columbia more equitable it is a certainty that the appellees would themselves have been indicted pursuant to 18 U.S.C. 241 for having, by a premeditated violation of Rule 5(a), Federal Rules of Criminal Procedure, denied the appellant his right to a

⁹Where law enforcement officers do not give meticulous attention to due process, the power of the police becomes an instrument of tyranny. In respect to the FBI as the guardian of civil rights, J. Edgar Hoover said:

Among the most cherished and priceless benefits of United States citizenship are the rights and privileges guaranteed each individual by the Constitution. Citizens in every city, county and state look, and rightly so, to law enforcement for the protection and preservation of their civil liberties. It is difficult to conceive of a more vital task.

There is no indication that the FBI Director or his immediate subordinates had any knowledge of the appellees' act in respect to the appellant. To the contrary the evidence indicates that the appellees conspired directly with Judge Greene to secure the commitment of the appellant under color of local law. The statute of limitations of Section 265, California Penal Code, supra, is three years and it appears to have been the appellees' intention to keep the appellant locked up until the statute of limitations expired in July, 1966.

speedy trial, and for having held the appellant to answer for a crime against the laws of the United States for three months prior to indictment without his being admitted to bail.

STATUTES INVOLVED

42 U.S.C. 1983 - Every person who, under color of any statute, ordinance, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

18 U.S. 241 - If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured by the Constitution or laws of the United States, or because of his having so exercised the same; * * * They shall be fined not more than \$5,000 or imprisoned not more than ten years, or both.

24 D.C. Code 301(a) - Whenever a person is arrested, indicted, charged by information, or is charged in the juvenile court of the District of Columbia, for or with an offense and, prior to the imposition of sentence or prior to the expiration

of any period of probation, it shall appear to the court from the court's own observations or from prima facie evidence submitted to the court, that the accused is of unsound mind or is mentally incompetent so as to be unable to understand the proceedings against him or properly to assist in his own defense, the court may order the accused committed to the District of Columbia General Hospital or other mental hospital designated by the court, for such reasonable period as the court may determine for examination and observation and for care and treatment if such is necessary by the psychiatric staff of said hospital. * * * [Emphasis added.]

11 D.C. Code 963(c) - In all cases whether cognizable in the Court of Sessions or in the District Court, the Court of General Sessions has jurisdiction to make preliminary examination and commit offenders or grant bail in bailable cases, either for trial or for further examination.¹⁰

RULES OF CRIMINAL PROCEDURE INVOLVED

Rule 5(a) - An officer making an arrest under a warrant issued upon a complaint or any person making an arrest without a warrant shall take the arrested person without unnecessary delay before the nearest available commissioner or before any

¹⁰Under the doctrine of expressio unius est exclusio alterius a judge of the Court of General Sessions sitting as a committing magistrate has no authority in the disposition of Federal cases beyond that stated in 11 D.C. Code 963(c).

other nearby officer empowered to commit persons charged with offenses against the laws of the United States. * * *

Rule 5(b) - The commissioner shall inform the defendant of the complaint against him, of his right to retain counsel and of his right to have a preliminary examination. He shall also inform the defendant that he is not required to make a statement and that any statement made by him may be used against him. The commissioner shall allow the defendant reasonable time and opportunity to consult counsel and shall admit the defendant to bail as provided in these rules. [Emphasis added.]

STATEMENT OF POINT

Appellant is appealing the judgment of the court below on the following point:

Where a person, arrested for an alleged offense against the laws of the United States by agents of the FBI, is taken before a municipal court and ordered committed to a mental hospital pursuant to local law, such person, in filing suit for deprivation of his civil rights, has stated a claim upon which relief can be granted.

ARGUMENT

A Special Agent of the Federal Bureau of Investigation
Who Takes a Federal Prisoner Before a Court Instead of
Before a U.S. Commissioner or Other Committing Magistrate
Is Subject to Suit Pursuant to 42 U.S.C. 1983 and Is In-
dictable Pursuant to 18 U.S. 241.

It is a matter of common law that any public official such as a mayor, justice of the peace, coroner, commissioner of markets, surveyor of highways and, on occasion, a sheriff, may sit as a committing magistrate and perform the duties which, in the case of an offense against the laws of the United States, are ordinarily performed by the U.S. Commissioner. It is also established by 11 D.C. Code 963(c), that a judge of the D.C. Court of General Sessions may sit as a committing magistrate. However, a judge of the D.C. Court of General Sessions cannot lawfully act as a committing magistrate and a court simultaneously. In Mance v. Cameron, 260 F. Supp. 851, 852, the court below said:

[T]he fact that a Judge of the Court of General Sessions at times sits as a committing magistrate and at other times as a Judge of a Court for the trial of a misdemeanor and the transition may be very brief, does not enhance his powers when he acts as a committing magistrate. * * * [A] committing magistrate, including a Judge of the Court of General Sessions when sitting as a committing magistrate, does not have the power to make a finding that a person charged with a felony is mentally incompetent to stand trial and thereby preclude action on this important question by [the U.S. District Court].

As a committing magistrate in a Federal case a judge is bound by Section 5(b), Federal Rules of Criminal Procedure, and

where he invokes a State statute or municipal ordinance (e.g., 24 D.C. Code 301(a)) it can be presumed that he is acting as a court. In the appellant's case it is an uncontroverted fact that the judge (Harold H. Greene) before whom the appellees took the appellant on November 30, 1965, invoked 24 D.C. Code 301(a) in ordering the appellant committed to D.C. General Hospital, and it is also uncontroverted that 24 D.C. Code 301(a) was invoked by another judge (Catherine B. Kelly) to secure the commitment of the appellant to St. Elizabeths Hospital. Therefore it is beyond question that both judges were acting in the capacity of courts and not as committing magistrates. In fact, this has already been admitted by Judges Greene and Kelly. In 1968 the appellant petitioned the U.S. Supreme Court for a writ of certiorari in an action against Judge Greene and Judge Kelly (Graham v. Greene, et al., No. 359, October Term, 1968). In their Brief in Opposition respondents Greene and Kelly stated (pp. 4-5):

In committing petitioner, first for mental observation, and thereafter on the ground that he was mentally incompetent to defend in a criminal prosecution, respondents Greene and Kelly acted pursuant to the statutes of purely local application, namely § 24-301(a), D.C. Code, 1967, and § 11-963(c), D.C. Code, 1967. * * * Such judicial actions were consistent with a long-standing practice engaged in throughout the years by Judges in the Court of General Sessions. [Emphasis added.]

The appellees have attempted to argue that as arresting officers they were not responsible for the judicial acts of

Judges Greene and Kelly. The appellant submits that this will not wash. The appellant in good faith submitted to arrest by the appellees and, as a Federal prisoner, the appellant was entitled to their protection and to the protection of the equal privileges and immunities clause of the Constitution. In disclaiming responsibility for the acts of Judges Greene and Kelly the appellees are saying in effect that where they are eye-witnesses to a tort or criminal offense they are not bound to protest or report it. The appellant suggests, however, that if such eye-witnesses do not protest or report a tort or criminal offense it must be presumed that they are accessories and/or accomplices.¹¹ A law enforcement officer has an obligation to protect his prisoner from wrongful interference in the due process of law. To accept the appellees' argument is to aver that a sheriff who arrests a person on a homicide charge and releases him to a lynch mob is not responsible for the lynch mob's subsequent acts. Lynching is lynching, whether done by a mob or a court and the appellant submits that it is lynching where a

¹¹ The law presumes that, when a person will not respond to questioning, he has something to conceal. On two occasions the appellant has sought to obtain a deposition from appellee Blazek and on two occasions appellee Blazek has persuaded the court below to block the taking of a deposition. Cf. Commonwealth v. Webster, 59 Mass. 295, 316:

[I]f such was the truth, that the suspicious circumstances can be accounted for consistently with innocence, and [the accused] fails to offer such proof, the natural conclusion is that the proof, if produced, instead of rebutting, would tend to sustain the charge.

Cf. "negative misprision," Black's Law Dictionary, 4th ed., p. 1151.

Federal prisoner is deprived of his liberty by a municipal court, whatever the pretext, for three months prior to indictment. The appellant further submits that the appellees were part and parcel of this lynching, for if the appellees had reason to believe the appellant was insane the statute to have been invoked was 18 U.S.C. 4244 and not 24 D.C. Code 301(a).¹² If it is conceded that Judges Greene and Kelly, in the appellant's case, had judicial jurisdiction of person and subject matter, this does not exculpate the appellees, because, in taking the appellant before a court the appellees were in violation of Rule 5(a), Federal Rules of Criminal Procedure. The appellees may argue this case till Kingdom Come (and probably will) but whatever their argument the fact remains that they are subject to suit pursuant to 42 U.S.C. 1983 and indictable pursuant to 18 U.S.C. 241.¹³

¹² 18 U.S.C. 4244 - Whenever after arrest and prior to the imposition of sentence or prior to the expiration of any period of probation the United States Attorney has reasonable cause to believe that a person charged with an offense against the United States may be presently insane or otherwise so mentally incompetent as to be unable to understand the proceedings against him or properly to assist in his own defense, he shall file a motion for a judicial determination of such mental competency of the accused, setting forth the ground for such belief with the trial court in which proceedings are pending. * * * [Emphasis added.]

¹³ See also 22 D.C. Code 703:

Whoever corruptly, by threats or force, endeavors to influence, intimidate, or impede any juror, witness, or officer in any court in the District [of Columbia] in the discharge of his duties, or by threats or force, in any other way obstructs or impedes or endeavors to obstruct or impede the due administration of justice therein, shall be fined not more than two hundred dollars or imprisoned not more than three years, or both. [Emphasis added.]

CONCLUSION

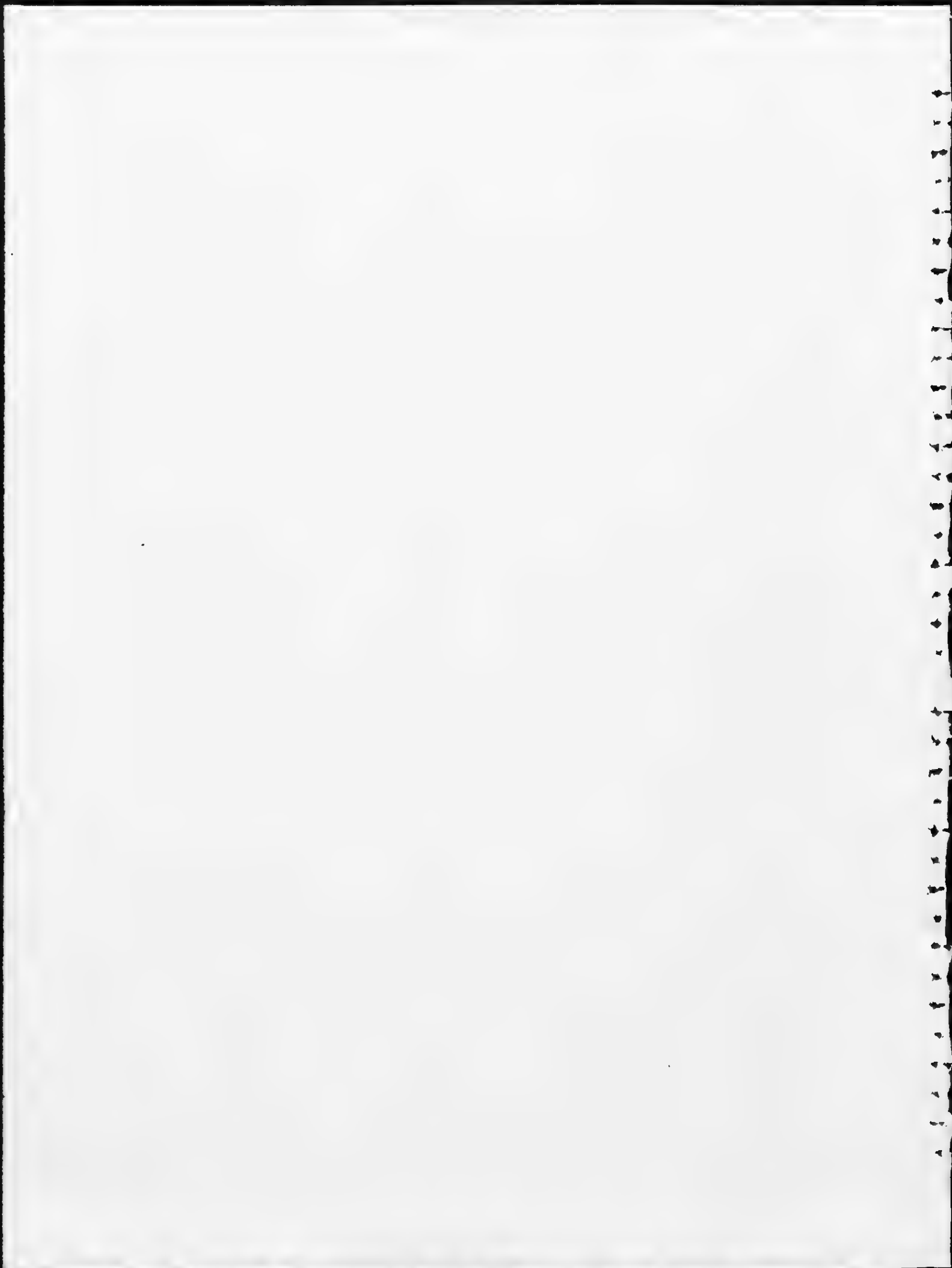
Where a citizen cannot rely upon law enforcement officers to abide by the law and where a citizen cannot obtain remedy in the courts, it is inevitable that he will resort to self-help. In the appellant's case, where the appellant's daughter had been abducted, the obvious solution was to bump off the abductors. The appellant's first obligation was to his wife and he was duty-bound to come to her defense, no matter what penalties he might inflict upon himself. Not being given to homicide, however excusable, the appellant instead invoked the doctrine of necessity to bring the abductors to justice. Regrettably he did not take into account the possibility of collusion between the appellees and the District of Columbia courts.¹⁴

¹⁴ It is difficult to believe that the courts in the District of Columbia are not corrupt when they knowingly condone preventive detention. Preventive detention is based on crystal ball predictions of what a person might do, and to this extent it is tantamount to Thought Control. In the appellant's case it is undisputed that (1) the appellant had not, prior to his arrest, been acting in a disorderly manner; (2) the sole complaint against the appellant was made by appellee Blazek who, at no time, was threatened by the appellant; (3) the accusation was without substance as evidenced by the Government's subsequent motion to dismiss the indictment; (4) the appellant was imprisoned for six months prior to arraignment and without being admitted to bail; (5) the transcript of the appellant's testimony at a so-called competency hearing in the D.C. Court of General Sessions, which led to the appellant's commitment to St. Elizabeth's Hospital, shows that the appellant thoroughly understood the charges against him; (6) the appellant was committed to St. Elizabeth's Hospital on the basis of a letter signed by two D.C. General Hospital psychiatrists, one of whom had never seen nor talked with the appellant. Since the method employed to secure the appellant's commitment to St. Elizabeth's Hospital was irregular in the extreme, there is every appearance of collusion between the courts and the Department of Justice.

It appearing from the available evidence that the appellees are liable to the appellant pursuant to 42 U.S.C. 1983 and are indictable pursuant to 18 U.S.C. 241, the appellant prays that the Order of the court below denying plaintiff relief from the said court's judgment granting defendants' Motion for Summary Judgment for the reason that there exists no genuine issue of material fact and that the defendants are entitled to judgment as a matter of law, and denying plaintiff the right to depose the defendants, be reversed, and the cause remanded for the entry of judgment for the plaintiff.

Respectfully submitted,

JOHN F. GRAHAM, Pro se
2022 Columbia Road, N.W.
Washington, D.C. 20009



APPENDIX

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COL MBIA

JOHN F. GRAHAM :
2022 Columbia Road, N.W. :
Washington, D.C. :

v. : Civil Action No. 1381-69

A.B. MILLER :
and :
JOHN BLAZEK :
Federal Bureau of Investigation :
Department of Justice :
Washington, D.C. :
.....:

RELEVANT DOCKET ENTRIES

1969

May 23 - Summons and complaint issued.
July 11 - Answer of defendants to complaint.
July 18 - Motion of plaintiff for summary judgment.
Sept. 4 - Motion of defendants for summary judgment and opposition
to plaintiff's motion for summary judgment.
Sept. 9 - Motion of plaintiff for production of documents.
Sept. 9 - Opposition of plaintiff to defendant's motion for
summary judgment.
Sept. 9 - Notice of plaintiff to take deposition.
Sept. 15 - Order denying plaintiff's motion for summary judgment;
granting defendant's motion for summary judgment; dis-
missing action. PRATT, J.
Sept. 22 - Motion of plaintiff to perpetuate testimony under Rule
27(b); points and authorities.
Sept. 27 - Motion of plaintiff for relief under Rule 60(b); points
and authorities.

- Oct. 1 - Opposition of defendants to motion to perpetuate testimony and motion for relief under Rule 60(b).
- Oct. 7 - Reply of plaintiff to defendants' opposition to motion to perpetuate testimony and motion for relief under Rule 60(b).
- Dec. 16 - Order denying motion of plaintiff to perpetuate testimony and motion for relief under Rule 60(b). McGUIRE, J.

1970

- Jan. 16 - Notice of appeal by plaintiff from order of December 16.

COMPLAINT FOR DEPRIVATION OF CIVIL RIGHTS

1. Plaintiff is a citizen of the United States and a resident of the District of Columbia, Defendants are Special Agents of the Federal Bureau of Investigation, Department of Justice, Washington, D.C. Damages claimed by plaintiff exceed Ten Thousand Dollars (\$10,000.00), exclusive of interest and costs.

2. In the summer of 1965, it being apparent to plaintiff that plaintiff's daughter, then residing in California, had been abducted as abduction is defined by Section 265, California Penal Code, plaintiff wrote a series of abusive and derogatory letters to those he had reason to believe were his daughter's abductors. These letters, according to information received by plaintiff, were effective, as plaintiff intended them to be, in harassing and embarrassing the recipients.

3. On or about November 1, 1965, defendants called upon plaintiff at his place of residence and cautioned plaintiff that mailing a letter threatening bodily injury was punishable pur-

suant to 18 U.S.C. 876. Having no intention that the alleged abductors of plaintiff's daughter escape justice, however, plaintiff, on or about November 10, 1965, wrote and mailed a letter threatening bodily injury to a resident of California and sent a copy to defendants, with two objects in mind.

a. To obtain the protection of the FBI in the event that a recipient of the threatening letter was prompted to retaliate against plaintiff with personal violence;

b. To obtain adjudication of the question of abduction by means of a criminal trial at which plaintiff could demand the presence of certain California witnesses pursuant to the Sixth Amendment's compulsory process of witnesses clause.

4. On November 30, 1965, plaintiff was arrested by defendants at plaintiff's place of residence. Contrary, however, to the provisions of Rule 5(a) Federal Rules of Criminal Procedure, defendants did not take plaintiff before a committing magistrate but took plaintiff before one Harold H. Greene, a judge of the District of Columbia Court of General Sessions, whose authority is limited in criminal matters to that of a police judge and/or a justice of the peace.

5. That the said Judge Greene was sitting as a police judge and not as a committing magistrate is evidenced by the

following circumstances:

a. The said Judge Greene did not at any time or in any respect observe the provisions of Rule 5(b), Federal Rules of Criminal Procedure.

b. The said Judge Greene ordered plaintiff committed to D.C. General Hospital pursuant to 24 D.C. Code 301(a), which statute specifically authorizes only "the court" to order such commitments.

6. Inasmuch as the said Judge Greene followed the procedure prescribed for a court and, in fact, invoked a statute applicable only to a court, it would appear that the said Judge Greene was not sitting as a committing magistrate but as a court.

7. By the acts of defendants who wrongfully, wantonly, maliciously and unlawfully disregarded the provisions of Rule 5(a), Federal Rules of Criminal Procedure, plaintiff was denied the rights, privileges and immunities guaranteed to him by the United States Constitution, such denial being punishable pursuant to 18 U.S.C. 241.

8. By reason of defendants' wrongful, wanton, malicious and unlawful acts, plaintiff was deprived under color of law and the statutes of the District of Columbia of the rights, privileges and immunities secured to plaintiff by the United States Constitution and the laws of the United States, and was

caused damage to his reputation and well-being in the amount of One Hundred and Fifty Thousand Dollars (\$150,000.00).

9. Wherefore plaintiff, pursuant to 42 U.S.C. 1983, demands judgment and damages, compensatory and exemplary, in the amount of One Hundred and Fifty Thousand Dollars (\$150,000.00), plus costs.

JOHN F. GRAHAM, pro se
Plaintiff

JURY DEMAND

Plaintiff demands trial by jury on all issues.

ORDER

Upon consideration of the plaintiff's Motion to Perpetuate Testimony under Rule 27(b) and Motion for Relief under Rule 60(b) filed herein, September 22, 1969, it is this 16th day of December, 1969,

ORDERED that the said motions be and the same hereby are denied.

MATTHEW F. McGUIRE
Presiding Judge.

NOTICE OF APPEAL

Notice is hereby given this 16th day of January, 1970, that the Plaintiff hereby appeals to the United States Court of Appeals for the District of Columbia from the judgment of this Court on the 16th day of December, 1969, in favor of Defendants against Plaintiff.

JOHN F. GRAHAM